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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT

CRIMINAL ACTION NOS:  
2018-00121*Judith N. Clark*

COMMONWEALTH

vs.

NICHOLAS A. HUBBARD

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS'  
MOTION TO SUPPRESS EVIDENCE

The defendant, Nicholas Hubbard ("Hubbard"), is charged with drug trafficking and possession with intent to distribute. The defendant now moves to suppress the evidence seized from his person and the vehicle he occupied on June 28, 2018 as well as statements he made to the police. As grounds for his motions, the defendant argues that the evidence retrieved was the product of an illegal stop, seizure and warrantless search of himself and the vehicle he was driving, in violation of his rights under the United States Constitution and the Massachusetts Declaration of Rights. In addition, the defendant argues that any statements he made to the police were made without the benefit of *Miranda* warnings. As a result, the defendant argues that all evidence retrieved after his unconstitutional seizure and his statements to the police must be suppressed.

The Court conducted an evidentiary hearing on July 2, 2019 and received testimony from one witness, Massachusetts State Police ("MSP") Trooper Edward Alldredge ("Trooper Alldredge"). On the basis of the evidence as determined to be credible by this Court and upon consideration of the motions and memoranda of counsel, the defendant's motion to suppress is DENIED. I make the following findings of fact and rulings of law.

## **FINDINGS OF FACT**

I credit and accept the testimony of Trooper Alldredge regarding the events that he observed and participated in on June 28, 2018. Trooper Alldredge has law enforcement experience as both a Bourne police officer for 3 ½ years and as a state trooper for 1 ½ years. He has practical experience in the investigation of narcotics cases and has attended many different narcotics trainings. Trooper Alldredge works out of the Yarmouth state police barracks and broadly patrols the Cape Cod area extending between exit 4 and the Orleans rotary of Route 6. He frequently patrols Hyannis as he knows it to be an area where there are lots of motor vehicle violations, lots of drugs and frequent overdoses. The credible evidence upon which the court relies demonstrates the following events to have occurred.

At approximately 2 a.m. on June 28, 2018, Trooper Alldredge was on uniformed patrol in a semi-marked MSP cruiser on Bassett Lane in Hyannis, Massachusetts. Bassett Lane is a two-lane road with a yellow line in the middle. The road is pretty straight in the area where Trooper Alldredge was then traveling. At that time, Trooper Alldredge observed a Chevrolet sedan ("the Chevrolet") traveling in the direction of North Street drift over the yellow lane line by approximately one tire width and then returned to its proper lane. Upon making this observation, Trooper Alldredge used his in-vehicle CJIS terminal to run the plate number and quickly learned that the Chevrolet had failed its inspection in December 2017. At some point after the Chevrolet turned right onto North Street, Trooper Alldredge activated his cruiser's lights to initiate a motor vehicle stop for a marked lane violation and an uninspected vehicle. In response, the Chevrolet swerved abruptly to the right and jammed on its brakes before coming to a stop. Trooper Alldredge positioned his cruiser directly behind the Chevrolet and used the cruiser's spotlight to illuminate the interior cabin.

As Trooper Alldredge approached the driver's side of the vehicle, he observed two occupants. Trooper Alldredge told the driver, later identified as Hubbard,<sup>1</sup> why he had been stopped and asked for a driver's license. Hubbard provided identifying information.<sup>2</sup> Trooper Alldredge observed that Hubbard's hands were shaking and that the front seat passenger was not wearing a seatbelt, also a civil violation. Thereafter, Trooper Alldredge attempted to identify the passenger who did not have an identification but provided a social security number. As he interacted with the unidentified passenger, Trooper Alldredge observed that his hands began to shake, as did his voice. Trooper Alldredge returned to his cruiser to use the CJIS terminal to obtain further identifying information of the driver and the passenger. As to the driver, Trooper Alldredge learned that Hubbard had an active license and no warrants. He also learned that Hubbard had more than forty arraignments and a firearm conviction. Trooper Alldredge was unable to identify the passenger using the social security number provided to him by the passenger. Trooper Alldredge returned to the Chevrolet to ask the passenger to restate his social security number and returned to his cruiser/CJIS terminal. As he continued to try to identify the passenger (using the provided social security number which turned out to be off by a few digits), two Barnstable police officers arrived on the scene and assisted Trooper Alldredge. While still in his cruiser on the CJIS terminal, Trooper Alldredge observed Hubbard quickly look in the direction of his cruiser, lean forward and completely out of his sight, pop back up into his sight, look back at the cruiser again, lower himself in the driver's seat and relook at the cruiser this time using the driver's side mirror. Additionally, Trooper Alldredge observed that the passenger

<sup>1</sup> In earlier interactions with other state troopers, Trooper Alldredge was familiar with Hubbard's name, the fact that he may be dealing drugs and had a firearm conviction. As of June 28, 2018, Trooper Alldredge did not know what Hubbard looked like and it did not "click" with him that the Chevrolet's driver was Hubbard until he observed him shaking.

<sup>2</sup> Trooper Alldredge could not remember if Hubbard provided his license, but he recalled that Hubbard provided him with identifying information.

was also looking at the cruiser using his side mirror. Upon making all of the prior observations of the vehicles' occupants and knowing Hubbard's criminal history, Trooper Alldredge suspected that Hubbard reached under his seat either to retrieve or pack away a firearm.

Trooper Alldredge, accompanied by the two Barnstable police officers, returned to the defendant's vehicle. Approaching on the driver's side, Trooper Alldredge told Hubbard that he saw him duck out of sight and asked Hubbard what he was reaching for. Before he answered, Trooper Alldredge observed that Hubbard was shaking more visibly, breathing heavily and that his carotid artery was pulsing in his neck. Hubbard responded "Nothing man, I got nothing." Trooper Alldredge then repeated that he saw Hubbard lean forward and asked if he was hiding anything. Hubbard stared straight ahead and did not respond. Fearing for his own safety, Trooper Alldredge directed Hubbard to exit the vehicle. Hubbard complied. Trooper Alldredge directed Hubbard to the front of the Chevrolet and pat-frisked him. During the pat-frisk, Trooper Alldredge did not locate any weapons, but felt a bag of powdery substance on Hubbard's interior left ankle area inside his sock. Trooper Alldredge suspected the bag contained drugs, but he did not then seize it. Meanwhile, one of the Barnstable police officers on the scene was keeping watch of the passenger. As the other Barnstable police officer took oversight of Hubbard, believing that a firearm was under the front seat, Trooper Alldredge returned to the Chevrolet and ordered the passenger to exit the vehicle.<sup>3</sup>

After the Chevrolet was vacated, Trooper Alldredge illuminated the driver's side foot area and underneath the seat with his flashlight in search of any weapons. He observed multiple, empty corner cut baggies under the seat and a small, round, uncovered metal cylinder positioned upright in a hole cut in the ripped carpet just in front of the driver's seat. Inside the cylinder,

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<sup>3</sup> The passenger was directed to the rear of the Chevrolet, pat-frisked to a negative result, identified by his name and date of birth and later permitted to leave the scene.

Trooper Alldredge observed what appeared to be round, broken-up pieces of a packaged drug finger and half of a pill. Trooper Alldredge returned to Hubbard showing him the cylinder and stated this looks like broken up pieces of a finger of dope. Hubbard looked down and stated "Yes, that's what it is." Trooper Alldredge then read Hubbard his *Miranda* rights from a card he keeps with him. Hubbard appeared to understand the warnings, did not ask for the warnings to be repeated, acted appropriately, was polite and in control. Hubbard then asked Trooper Alldredge "Can I please talk to you?" Thereafter, Hubbard told Trooper Alldredge that he wasn't a "shithead," that he started selling heroin to party with his friends and that he did not touch fentanyl or sell to addicts. Trooper Alldredge then asked about the bag in his sock. Hubbard stated that it was 6 grams of cocaine. When asked about the pill, Hubbard responded that it was a Xanax. Trooper Alldredge placed Hubbard under arrest, handcuffed him and secured him in the cruiser. Once Hubbard was seated in the cruiser, Trooper Alldredge retrieved the powdery substance, later identified as cocaine, in the plastic bag from Hubbard's left ankle sock. Trooper Alldredge asked Hubbard if there were any more drugs in the car and Hubbard replied "If I'm honest with you, what can you do for me?" Trooper Alldredge called for a narcotics canine to come to the scene and requested a tow. Another state trooper, Trooper David Pan, arrived on the scene as did the tow truck. It was raining and the drug sniffing dog had still not arrived on-scene. The officers decided Trooper Pan would escort the tow truck carrying the Chevrolet to the secured portion of the parking lot at the Yarmouth state police barracks and to re-route the drug sniffing dog to the barracks.

Trooper Alldredge transported Hubbard in his cruiser to the Yarmouth barracks. Hubbard was very talkative and offered up information to the trooper. Specifically, Hubbard told Trooper Alldredge that he had lost all respect for himself and had made mistakes. Trooper

Alldredge told Hubbard that a drug-sniffing canine was coming and, hearing this, Hubbard appeared more nervous. Trooper Alldredge asked Hubbard if there were any more drugs in the car. Hubbard responded that he didn't think so but that he knew where 100 grams of heroin was buried in the woods in Barnstable and that he wanted to get the drugs off the street as he was all done with hurting people. Hearing this, Trooper Alldredge contacted Cape Cod Drug Task Force officer Trooper Hanifin to share this information. Trooper Hanifin then came to the barracks to assist in Hubbard's booking.

After they arrived at the Yarmouth barracks, Trooper Alldredge booked Hubbard. Hubbard refused a phone call. Trooper Alldredge does not recall if he repeated *Miranda* warnings to Hubbard a second time at the station, but if he did so he did not have Hubbard sign a waiver form. While Hubbard was seated on the booking bench, Trooper Hanifin asked him about the alleged drug stash in the woods. Hubbard repeated a few times that he knew where the drugs were hidden in the woods, that he wanted to tell the officers where it was and get it off the street, but then changed the subject before he provided the location. Eventually, Hubbard told Troopers Alldredge and Hanifin that the drugs were in the back seat of the Chevrolet behind the driver's seat in a black leather bag. Trooper Alldredge told Hubbard that he was going to the car to get the drugs. Hubbard did not object. Trooper Alldredge did not affirmatively ask Hubbard to consent to the search of his car. The drug sniffing dog had not yet arrived. Trooper Alldredge retrieved the keys to the Chevrolet from the booking desk, used them to open the vehicle and found the drugs in the back seat where Hubbard described. Inside the black leather bag, Trooper Alldredge found 12 rolled fingers of a brown-colored powder, later determined to be approximately 118 grams of heroin. In part, Trooper Alldredge searched the Chevrolet to locate

and remove it in the event that Hubbard made bail at some later point. Later, the drug-sniffing canine investigated the vehicle and did not find any additional narcotics.

### RULINGS OF LAW

Article 14, like the Fourth Amendment, guarantees the right to be free from unreasonable searches and seizures. *Commonwealth v. Buckley*, 478 Mass. 861, 865 (2018). “Because “[a] police stop of a moving automobile constitutes a seizure,” that stop must be reasonable in order to be valid under the Fourth Amendment and art. 14.” *Id.*, quoting *Commonwealth v. Rodriguez*, 472 Mass. 767, 773 (2015). “Where the police have observed a traffic violation, they are warranted in stopping a vehicle.” *Commonwealth v. Santana*, 420 Mass. 205, 207 (1995) quoting *Commonwealth v. Bacon*, 381 Mass. 642, 644 (1980). Here, Trooper Alldredge observed Hubbard commit a traffic violation; namely, a marked lanes violation of G.L. c. 89, § 4A and determined that he was operating a vehicle with an expired registration in violation of G.L. c. 90, § 23, and, therefore, had the right to stop the vehicle. See *Buckley*, 478 Mass. at 873 (stop is reasonable based on observed traffic violation).

Turning next to the scope of the stop, this Court recognizes the well-established principle that “[a] justifiable threshold inquiry permits a limited restraint of the individuals involved as long as their detention is commensurate with the purpose of the stop.” *Commonwealth v. Torres*, 424 Mass. 153, 162 (1997), quoting *Commonwealth v. Ellsworth*, 41 Mass. App. Ct. 554, 557 (1996). In the context of a routine traffic stop, the detention of the vehicle and its occupants must end when the driver produces a valid license and registration or when the officer completes the issuance of a citation or warning, unless a development occurs that is either indicative that either the operator or his passengers were involved in the commission of a crime or engaged in other suspicious conduct. *Torres*, 424 Mass. at 157-158 (internal citations omitted);

*Commonwealth v. Obiora*, 83 Mass. App. Ct. 55, 57-58 & n.4 (2013)(where trooper had reason to question the accuracy of information provided by occupants of car regarding the rear-seat passenger's identity, she was justified in taking further investigative measures to reconcile the discrepancy). Such grounds for further investigation require a reasonable belief that further criminal conduct is afoot based on "specific and articulable facts and the specific reasonable inferences which follow from such facts in light of the officer's experience." *Commonwealth v. King*, 389 Mass. 233, 243 (1983), quoting *Commonwealth v. Silva*, 366 Mass. 402, 406 (1974). See *Commonwealth v. Gonsalves*, 429 Mass. 658, 663 (1999) ("Citizens do not expect that police officers handling a routine traffic violation will engage . . . in stalling tactics, obfuscation, strained conversation, or unjustified exit orders, to prolong the seizure in the hope that, sooner or later, the stop might yield up some evidence of an arrestable crime."); *Commonwealth v. Williams*, 422 Mass. 111, 116 (1996) ("We view the facts and circumstances as a whole in assessing the reasonableness of the officer['s] conduct"); *Commonwealth v. Fraser*, 410 Mass. 541, 545 (1991) ("a combination of factors that are each innocent of themselves may, when taken together, amount to the requisite reasonable belief"); *Commonwealth v. Wren*, 391 Mass. 705, 707 (1984), and cases cited ("A hunch will not suffice").

"In evaluating whether the police exceeded the permissible scope of a stop, the issue is one of proportion. 'The degree of suspicion the police reasonably harbor must be proportional to the level of intrusiveness of the police conduct.'" *Commonwealth v. Sinfuroso*, 434 Mass. 320, 323 (2001), quoting *Williams*, 422 Mass. at 116. When Trooper Alldredge first approached the defendant's vehicle, he retrieved Hubbard's driver's license and the passenger's social security number. These initial inquiries were plainly within the permissible scope of a routine traffic stop. See *Commonwealth v. Cordero*, 477 Mass. 237, 242 (2017)(tasks during routine traffic

stop reasonably include "confirmation of the identity of the driver"). Whether intentional or not, the passenger provided an inaccurate social security number, which called into question his true identity. Coupled with the fact that the vehicle's registration was expired and the nervous demeanor of the driver, and later the passenger, Trooper Alldredge had reasonable suspicion that Hubbard and his passenger were engaged in suspicious conduct that warranted further investigation. See *Commonwealth v. Feyenord*, 445 Mass 72, 77-78 (2005)(officer's investigation of traffic violation turned into reasonable investigation of other crimes where suspect was unable to produce a driver's license, provided a registration that was not in his name, gave the officer a false name and birthdate, and in the course of routine questioning the driver and passenger provided inconsistent information about their destination and identities); *Obiora*, 83 Mass. App. Ct. at 57. Thus, Trooper Alldredge was justified in briefly further detaining Hubbard and his passenger to re-ask the passenger for his social security number and expand the scope of his investigation. See W.R. LaFave, Search and Seizure § 9.2(f), at 334-335 (4<sup>th</sup> ed. 2004), and cases cited therein ("if the suspect's explanation needs to be checked out, and in particular if his explanation is known to be false in some respects, there is reason to continue the detention somewhat longer while the investigation continues.").

In a routine traffic stop, police may order a driver or passenger out of a vehicle only based on reasonable suspicion that such person is engaged in criminal activity, or reasonable apprehension of danger to the police or others. See *Commonwealth v. Torres*, 433 Mass. 669, 673 (2001); *Commonwealth v. Gonsalves*, 429 Mass. 658, 662-663 (1999); *Commonwealth v. Hooker*, 52 Mass. App. Ct. 683, 685-686 (2001). A police officer who has made a lawful vehicle stop is entitled to order the driver out of the vehicle if he has a reasonable basis to fear for his own safety, or if doing so will reasonably further investigation of suspected criminal activity.

See *Commonwealth v. Feyenord*, 445 Mass. 72, 75-76 (2005), citing *Torres*, 433 Mass. at 675, and *Gonsalves*, 429 Mass at 662. To order either the driver or passenger out of the car, police must have, with respect to that individual, an objectively reasonable basis. See *Gonsalves*, 429 Mass. at 665 n.5. "While a mere hunch is not enough, . . . it does not take much for a police officer to establish a reasonable basis to justify an exit order based on safety concerns." *Id.* at 664 (internal citations omitted). Here, based on the totality of the circumstances, to include the driver and passenger's demeanor, physical manifestations, Trooper Alldredge's observation of Hubbard disappearing and reappearing in a manner consistent with him reaching under the driver's seat and observation of both occupants surveilling the Trooper's car, Trooper Alldredge had reasonable suspicion of a threat and was justified in ordering Hubbard and his passenger to exit the vehicle based on those reasonable concerns for his safety and the safety of the other officers at the scene. See *Gonsalves*, 429 Mass. at 662; *Commonwealth v. Riche*, 50 Mass. App. Ct. 830, 832-34 (2001) (lawful stop for a rear license plate light violation developed into much more than a routine stop where a conjunction of factors created a reasonable suspicion of threat to safety supporting an exit order to the driver and each passenger); *Commonwealth v. Robles*, 48 Mass. App. Ct. 490, 493 (2000). Particularly after failing to find a weapon on Hubbard's person, Trooper Alldredge was permitted to frisk the vehicle to look in the immediate area of the vehicle where Hubbard was seated for weapons. *Commonwealth v. Myers*, 82 Mass. App. Ct. 172, 177-78 (2012). In the protective frisk Trooper Alldredge found a small amount of drugs and drug paraphernalia in plain view.

Moving next to Hubbard's arrest, "[p]robable cause exists where, at the moment of arrest, the facts and circumstances within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an

offense." *Id.* Here, in addition to the activity that justified the stop and exit order, the protective frisk of the Chevrolet yielded drugs and drug paraphernalia. When confronted with the metal cylinder, Hubbard readily admitted it contained drugs. Thus, there was sufficient evidence to constitute probable cause to arrest Hubbard, at a minimum, for possession of illegal drugs.

*Maryland v. Pringle*, 540 U.S. 366, 372 (2003); see *Commonwealth v. Lites*, 67 Mass. App. Ct. 815, 819-820 (2006).

Moving next to the defendant's *Miranda* argument, there is no dispute that the defendant was in custody and thus *Miranda* warnings were required. See *Commonwealth v. Larkin*, 429 Mass. 426, 432 (1999) (*Miranda* warnings are required when individual is subject to custodial interrogation). Hubbard argues that Trooper Alldredge did not provide *Miranda* warnings, did not have Hubbard sign a waiver form and did not record his booking interview. Under the traditional *Miranda* analysis, the court must first assess whether the warnings were given and, if given, complied with *Miranda* itself.<sup>4</sup> See *Commonwealth v. Garcia*, 379 Mass. 422, 428 (1980) (*Miranda* requirement of warnings must be scrupulously observed). As stated above, the court credits Trooper Alldredge's testimony that he provided verbal *Miranda* warnings, read from a card, as read into the record during his testimony at the suppression hearing. Hubbard appeared to understand those rights, acted appropriately and directly thereafter asked if he could speak to

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<sup>4</sup> The Commonwealth bears the burden of proving the validity of a *Miranda* waiver beyond a reasonable doubt. *Commonwealth v. Day*, 387 Mass. 915, 920-21 (1983). Beyond questioning about whether Trooper Alldredge had Hubbard sign a *Miranda* waiver form, the defendant does not challenge that his waiver was knowing, intelligent and voluntary or that the statements he made were voluntarily. There was sufficient evidence to determine that Hubbard "knowingly, intelligently, and voluntarily waived" his rights, and made statements "freely and voluntarily" after those rights were read to the Defendant. *Garcia*, 379 Mass. at 428. Hubbard appeared to understand the rights recited, asked no clarifying questions indicating any confusion, and had been arrested previously (more than 40 times), giving him prior experience with *Miranda* and, more generally, the criminal justice system. See *Commonwealth v. Mandile*, 397 Mass. 410, 413 (1986) (factors to consider when analyzing the validity and voluntariness of a *Miranda* waiver include experience with and in the criminal justice system). Nor was there evidence that Trooper Alldredge made any promises or other inducements to Hubbard to get him to waive his rights.

Trooper Alldredge and volunteered that he sold drugs to friends and identified the drugs in his sock. There is no requirement that the defendant sign a waiver form. See *Commonwealth v. Groome*, 435 Mass. 201, 218 (2001)(absence of written confirmation does not vitiate a valid oral *Miranda* waiver). Thus, Hubbard's statements made at the stop scene after the police gave him *Miranda* warnings, among them, that he had 6 grams of cocaine in his sock and that he sold heroin to his friends, will not be suppressed. Nor is there a requirement that *Miranda* warnings be repeated a second time at the station, *Commonwealth v. Edwards*, 420 Mass. 666, 671 (1995), or that the booking interview be recorded. *Commonwealth v. DiGiambattista*, 442 Mass. 423, 441 (2004). Under the facts of this case, there was no significant break in the interrogation from the time Hubbard was placed in the police cruiser and again began offering up evidence of his drug dealing, to his incriminatory statements made during booking, such that the police were required to re-advise Hubbard of his *Miranda* rights or obtain a second waiver. *Edwards*, 420 Mass. at 671. Thus, the statements Hubbard made at the police station during booking, among them, that there were 100+ grams of heroin in the backseat of his car, will not be suppressed.

Finally, the drug evidence was properly recovered from the car at the Yarmouth barracks under the automobile exception and will not be suppressed. Consistent with the law, the defendant concedes that Trooper Alldredge had probable cause to search the Chevrolet. See *Commonwealth v. Dolby*, 50 Mass. App. Ct. 545, 551 (2000)(observation of a bong with residue in chamber provided probable cause to seize the bong and search the vehicle). Here, defendant challenges exigency. Contrary to the defendant's argument, "the determination of exigency must be made with reference to the time of the stop" and the inherent mobility of an automobile satisfies the exigency requirement. *Commonwealth v. Motta*, 424 Mass. 117, 124 (1997)(court held that "given probable cause, and exigent circumstances ... either a warrantless search on the

highway or removal to the police stations and immediate search there is constitutionally permissible."); *Commonwealth v. Markou*, 391 Mass. 27, 29-30 (1984)(same); *Commonwealth v. Lara*, 39 Mass. App. Ct. 546, 548 (1995) ("if a search is constitutionally permissible on the street, with attendant risks [attempts to interfere with search, exposure to traffic] and awkwardness [tools not at hand, obstruction of traffic], the occupants of the car are no worse off [i.e. suffer no greater intrusion] if the search is continued in the secure setting of the police station"). Given that Bassett Lane was a two lane road, the exposure to traffic along with the rainy weather justified the transport of the Chevrolet to the barracks and Hubbard suffered no greater intrusion.

Finally, although exigency is determined at the time of the stop, under the case law the search and seizure is permissible as long as there was no unreasonable delay between the stop and the search. See *Motta*, 424 Mass. at 124; *Commonwealth v. Eggleston*, 453 Mass. 554, 559 (2009) ("the time between an objective determination of probable cause and the conducting of the search of the automobile may be unreasonable . . . if the police as an objective matter have no reasonable basis to expect that delay would produce any additional benefit"); *Contra Commonwealth v. Agosto*, 428 Mass. 31, 34 (1998)(the automobile exception was inapplicable where a vehicle was held in a police impoundment facility, and the police conducted several warrantless searches over a twenty-one day period. . . Here, any delay between the time Trooper Aldredge had probable cause to search the vehicle (while the vehicle was still on Bassett Lane), and the actual search at the Yarmouth barracks was justified and reasonable because the police were awaiting arrival of the drug-sniffing canine. See *Commonwealth v. Bell*, 78 Mass. App. Ct. 135, 142 (2010)(motor vehicle exception applicable where there was a "plausible justification")

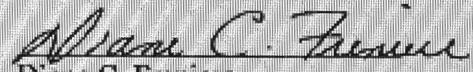
for delay in searching because police were awaiting the arrival of the officer with special training in finding hidden compartments).<sup>5</sup>

For these reasons, the defendant's arguments that the evidence retrieved was the product of an illegal stop, seizure, and warrantless search of himself and the vehicle he was driving are without merit. The defendant's motions to suppress must be DENIED.

ORDER

For the foregoing reasons, it is hereby ORDERED that the defendant's motion to suppress be DENIED.

Date: July 19, 2019

  
Diane C. Freniere  
Justice of the Superior Court

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<sup>5</sup> An argument could be made for admission of the evidence under the inevitable discovery doctrine which states evidence that is fruit of the poisonous tree is rendered admissible if the Commonwealth can prove that the evidence would have been inevitably discovered by lawful means. *Commonwealth v. Benoit*, 382 Mass. 210, 217 (1981); *Commonwealth v. O'Connor*, 406 Mass. 112, 117 (1989) (the nature of the inevitability must be such that discovery by lawful means is "certain as a practical matter."). Presumably, the Chevrolet could not be driven on the roads of the Commonwealth given that it had a failed inspection and Hubbard had been arrested. The court notes, however, that the Commonwealth failed to present any written opposition to the defendant's motions to suppress or make any such argument at the hearing. It also did not present any evidence of the MSP's impoundment/inventory policy.